CORRESPONDENCE.

LEIPSIG, December, 1888.

GERMAN universities to-day are what Bologna was in the thirteenth century; perhaps nowhere else can be found such a cosmopolitan gathering as in Berlin. Libraries and museums aid the fame of the professors in drawing together some six thousand students, twelve hundred of them to pursue the study of law.

One would think that the conveniences for study, the buildings, the libraries, would be excellent here. But not so; a former palace is converted into a building for lectures, with rooms either too small or too large, and ventilation only the object of theoretical study. The lower officials are none too obliging; indeed, in the Royal Library they are very unaccommodating. The Royal Library has an excellent collection of law books, though it has but few on English law. The reading-room is open until seven o'clock; and in every department many of the leading books and periodicals are placed in reserved alcoves, as in Gore Hall. The University Library has a much more limited collection, and offers but few additional advantages to the law student. In Leipsig, the Supreme Court Library contains a very complete collection of books on Roman and German law, and most of the English reports. The United States Supreme Court reports, and quite a number of the leading text-books and periodicals on the English common law, especially on commercial law, are to be found here. But, unfortunately, the temporary court building is so small that the privilege of using the library is granted to students only for very special reasons. In connection with the law seminars there is a small collection of the most necessary books, well arranged, and accessible at any time during the day in Leipsig, but only for one hour a week in Berlin.

About the only restraint on the highly valued but, at any rate, in many cases, somewhat demoralizing academic freedom, is the rule that one course must be paid for—attendance is not required—during each semester. No one troubles himself about the student; he listens to lectures or not as he pleases; and when he is ready to stand the examination, he announces himself. He must show the professors' signatures in his student's book to a certain number of courses paid for during at least six—in Bavaria eight—semesters, including, perhaps, two semesters during which he served in the army. If he pass the examination satisfactorily, — and, in the case of the University examination, write an acceptable essay,—no questions are asked as to how he acquired his information.

The law courses offered in the German universities vary from seventy-five or more in Berlin, to a dozen in some of the smaller universities. One of Berlin's chief advantages over Leipsig is the choice one has there of hearing one of several lectures on the same subject, and thus the better opportunity of avoiding a conflict of courses. During the first semester, the history and institutions of Roman law, the philosophy of law, and jurisprudence are usually taken up. In these courses the

various legal and political institutions of Rome, its public and its private law, are developed from their beginnings to the time of Justinian. The citations are chiefly from Justinian's and Gaius' Institutions. Pandects, or that part of the common law of Germany which is based on the Roman law, form the main work of the second semester. No course is given in German law corresponding to the institutions of the Roman law; but the course on the history of German law is made to include the treatment of many of the institutions of private law, as well as the entire public law of the Teutonic tribes of the German empire to the period of the reception of the Roman law in Germany. The development of the private law from that time to the present day, so far as it has maintained itself against the Roman law, either as Roman law for all Germany, or as a part of the particular law of any of the German States, is the subject of the course on German private law, corresponding to the Pandects for the Roman law. On the Continent commercial law is sharply divided from the general civil law. It is applicable only to a limited class of people, and is often administered by separate courts. It is considered necessary in these lecture courses to cover the whole subject. This necessarily compels a lack of detail, a passing over of the various opinions on disputed questions. Constitutional, criminal, and institutional canon law, civil and criminal procedure, are all treated this way, by lectures which aim to present the whole subject systematically, and each part of it historically. More or less philosophical criticism prevails according to the particular ideas of each professor.

In addition to the lectures, not in their stead, *practica* and *seminars* are, especially of late, much recommended to the students. In the *seminars*, professor and student work together on original authorities. Sometimes a paper is read by one of the students, followed by discussion. In the nature of things but few men — at the most twenty — are admitted to the *seminars*. Their purpose is not to train a practical lawyer, but rather to guide the future professor into the work of original research. In the *practica*, cases are discussed by the professor. Instead of taking up Pandects systematically, he takes up real or supposed cases illustrative of some of the principles of Pandect law. He gives various possible opinions on the case,— sometimes he criticises the paper of one of the students.— and then develops his own views. Some professors allow class discussion, but this is not usual. *Repertoria* and *conversatoria* are courses for the discussion of legal questions, not necessarily with the cases; often a title from Justinian's Digest forms the basis of the work. The practical training of the student is not intended to be given during his university course. For this reason he is compelled to give three years to practical work between the first and second State examinations.

It is generally said that many students waste their first two semesters entirely. This may be true at the smaller universities, but in Leipsig or Berlin, at least two-thirds of them attend lectures faithfully. Many do more than this; they are given a complete outline of the subject in the lecture, enough for the first examination, and few care for anything more. The exceptions to this rule are the men who take part in the *seminars* and *practica*, and who read as much of the Corpus Juris and the literature of the law as they can find time for.

Of moot courts and law trials they know nothing. During this university training the work to be done is purely theoretical. The professors seldom concern themselves with pointing out that the courts adopt a view in conflict with the systematic conclusions which they have drawn. The student will learn that later. Moreover, the rule of *stare decisis* does not prevail, and therefore the decisions are not of such great importance to the development of the law as they are in America.

If it be asked whether a course in Germany will be valuable to the American law student, taking an interest in law not only as a profession, but also as a science, the answer must undoubtedly be in the affirmative. If it be further asked, what is to be gained by such a course? perhaps the answer will be, contact with men of wonderful legal ability and untiring industry, knowledge of a system of law which has formed the basis on jurisprudence of most civilized States, and has had some influence,— perhaps the amount is underestimated, — at various periods on our law, acquaintance with a legal literature covering every branch of law, and treating every subject historically and philosophically, with an ingenuity, depth of thought, industry, and learning, nowhere surpassed, if indeed equalled.

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LECTURE NOTES.

[These notes were taken by students from lectures delivered as part of the regular course of instruction in the School. They represent, therefore, no carefully formulated statements of doctrine, but only such informal expressions of opinion as are usually put forward in the class-room. For the form of these notes the lecturers are not responsible]

MONEY PAID UNDER MISTAKE OF FACT. — DEFENCE OF PURCHASE FOR VALUE. — (*From Professor Keener's Lectures.*) — Where A, induced by mistake, intentionally pays money to B, the legal title passes to B, and the obligation, if any, which B is under, is the equitable obligation of restitution. That the legal title passes in such a case is evident if one considers the effect of the conveyance of land under mistake, the fact being that the grantor, though induced by mistake, did intend to convey the land in question to the grantee named. In this latter case no one would question that the legal title had passed, and that at most the grantor's only right was an equitable right of restitution. Yet consent and delivery is as effectual in passing the title to personalty as is the execution and delivery of a deed in the case of realty. Hence, in the case of money paid under mistake, as above supposed, the legal title has passed, and A can have nothing more than an equity. A having only an equity, B, if he is a purchaser for value without notice of A's equity, cannot be compelled to make restitution.[1]

[1] *Merchants' Ins. Co.* v. *Abbott*, 131 Mass. 397 (Semble), s. c. 1 Keener, Cas. on Qu. Con. 443; *Southwick* v. *First Nat Bank*, 84 N. Y. 420 (Semble), s. c. 1 Keener, Cas. on Qu. Con. 319; *Townsmans* v. *Edgerton*, 16 Hun, 28 (Semble), s. c. 1 Keener, Cas. on Qu. Con. 439. See, however, *Atty. Gen.* v. *Perry*, Comyns, 481, s. c. 1 Keener, Cas. on Qu. Con. 435.